

ASSEMBLY BILL

No. 194

Introduced by Assembly Member Campos

January 28, 2013

An act to amend Section 54960.1 of, and to add Section 54959.5, to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 194, as introduced, Campos. Open meetings: protections for public criticism: penalties for violations.

(1) The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act prohibits a legislative body of a local agency from preventing public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body, as specified.

This bill would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the act. This bill would authorize a district attorney or any interested person to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void, as specified.

Because this bill would establish a new misdemeanor crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54959.5 is added to the Government
2 Code, to read:

3 54959.5. A member of a legislative body who, while acting as
4 the chairperson of that legislative body, prohibits public criticism
5 of the policies, procedures, programs, or services of the agency,
6 or of the acts or omissions of the legislative body, as protected
7 under subdivision (c) of Section 54954.3, shall be guilty of a
8 misdemeanor.

9 SEC. 2. Section 54960.1 of the Government Code is amended
10 to read:

11 54960.1. (a) The district attorney or any interested person may
12 commence an action by mandamus or injunction for the purpose
13 of obtaining a judicial determination that an action taken by a
14 legislative body of a local agency in violation of Section 54953,
15 54954.2, 54954.3, 54954.5, 54954.6, 54956, or 54956.5 is null
16 and void under this section. Nothing in this chapter shall be
17 construed to prevent a legislative body from curing or correcting
18 an action challenged pursuant to this section.

19 (b) Prior to any action being commenced pursuant to subdivision
20 (a), the district attorney or interested person shall make a demand
21 of the legislative body to cure or correct the action alleged to have
22 been taken in violation of Section 54953, 54954.2, 54954.3,
23 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in
24 writing and clearly describe the challenged action of the legislative
25 body and nature of the alleged violation.

26 (c) (1) The written demand shall be made within 90 days from
27 the date the action was taken unless the action was taken in an
28 open session but in violation of Section 54954.2, in which case
29 the written demand shall be made within 30 days from the date
30 the action was taken.

31 (2) Within 30 days of receipt of the demand, the legislative body
32 shall cure or correct the challenged action and inform the
33 demanding party in writing of its actions to cure or correct or

1 inform the demanding party in writing of its decision not to cure
2 or correct the challenged action.

3 (3) If the legislative body takes no action within the 30-day
4 period, the inaction shall be deemed a decision not to cure or
5 correct the challenged action, and the 15-day period to commence
6 the action described in subdivision (a) shall commence to run the
7 day after the 30-day period to cure or correct expires.

8 (4) Within 15 days of receipt of the written notice of the
9 legislative body's decision to cure or correct, or not to cure or
10 correct, or within 15 days of the expiration of the 30-day period
11 to cure or correct, whichever is earlier, the demanding party shall
12 be required to commence the action pursuant to subdivision (a) or
13 thereafter be barred from commencing the action.

14 (d) An action taken that is alleged to have been taken in violation
15 of Section 54953, 54954.2, 54954.3, 54954.5, 54954.6, 54956, or
16 54956.5 shall not be determined to be null and void if any of the
17 following conditions exist:

18 (1) The action taken was in substantial compliance with Sections
19 54953, 54954.2, 54954.3, 54954.5, 54954.6, 54956, and 54956.5.

20 (2) The action taken was in connection with the sale or issuance
21 of notes, bonds, or other evidences of indebtedness or any contract,
22 instrument, or agreement thereto.

23 (3) The action taken gave rise to a contractual obligation,
24 including a contract let by competitive bid other than compensation
25 for services in the form of salary or fees for professional services,
26 upon which a party has, in good faith and without notice of a
27 challenge to the validity of the action, detrimentally relied.

28 (4) The action taken was in connection with the collection of
29 any tax.

30 (5) Any person, city, city and county, county, district, or any
31 agency or subdivision of the state alleging noncompliance with
32 subdivision (a) of Section 54954.2, Section 54956, or Section
33 54956.5, because of any defect, error, irregularity, or omission in
34 the notice given pursuant to those provisions, had actual notice of
35 the item of business at least 72 hours prior to the meeting at which
36 the action was taken, if the meeting was noticed pursuant to Section
37 54954.2, or 24 hours prior to the meeting at which the action was
38 taken if the meeting was noticed pursuant to Section 54956, or
39 prior to the meeting at which the action was taken if the meeting
40 is held pursuant to Section 54956.5.

1 (e) During any action seeking a judicial determination pursuant
2 to subdivision (a) if the court determines, pursuant to a showing
3 by the legislative body that an action alleged to have been taken
4 in violation of Section 54953, 54954.2, 54954.3, 54954.5, 54954.6,
5 54956, or 54956.5 has been cured or corrected by a subsequent
6 action of the legislative body, the action filed pursuant to
7 subdivision (a) shall be dismissed with prejudice.

8 (f) The fact that a legislative body takes a subsequent action to
9 cure or correct an action taken pursuant to this section shall not
10 be construed or admissible as evidence of a violation of this
11 chapter.

12 SEC. 3. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.